

(2013) 08 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 26043 (W) of 2012

Pradip Sengupta and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 08 CAL CK 0066

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Subrata Mukherjee, Mr. Debasish Saha and Ms. Dipika Basu, for the Appellant; Amal Baran Chatterjee for 2 to 6. Mr. Ashok Kr. Ray and Mr. Mrinmoy Chakraborty, for the Respondent

Final Decision : Disposed Off

Judgement

Prasenjit Mandal, J.—This application is for issuance of a writ of mandamus commanding the respondent authorities to pay the entire respective arrear salaries with interest from July 1, 2008 in terms of establishment Memo No. 3733 dated June 26, 2012 to the petitioners and other consequential reliefs. The petitioners are the junior assistants or senior assistants i.e. non-teaching staff under the respondent University. There are some anomalies in fixation of this pay and allowances. In order to cure such defects, the respondent University adopted a policy that the pay of the senior assistant should be stepped up to that of the junior assistant provided the said difference is not by virtue of the said personal promotion.

2. The petitioners submitted various representations for the removal of the disparity in vain and ultimately, the respondent University issued the memo dated June 26, 2012. That memo was complied with in respect of the current salary of the petitioners, but, the arrear salaries have not paid to them. So, the application has been preferred by them.

3. Now, the question is whether the respondent University is bound to pay the

arrear salaries to the petitioners as per memo dated June 26, 2012 and whether the respondent authorities have made a discrimination and shown arbitrariness in depriving the arrear salaries to the petitioners.

4. Mr. Debasish Saha, learned Advocate appearing for the petitioners has contended that since the respondent University had issued the Memo No. 3733 of 2012 date June 26, 2012 indicating that pay of the 48 non-teaching staff having been fixed in comparison of the pay of Sri Sujit Nag w.e.f. July 1, 2008 as appearing in Annexure P-3 at Page No. 35 and since current pay and allowances are being paid, they are entitled to get the arrears of pay and allowances w.e.f. July 1, 2008. But, the respondent University is not complying with this memo date June 26, 2012. So, the writ of mandamus as prayed for should be granted.

5. On the other hand, Mr. Amal Baran Chatterjee, learned Advocate appearing for the respondent no. 2 to 6 has contended that the fixation of the pay of the 48 non-teaching staff had been done wrongly by comparison with the pay of Sri Sujit Nag, who was an electrician and his pay had been fixed at a higher level. The fixation of the pay of the writ petitioners had been done under compulsion as indicated in the affidavit-in-opposition. Moreover, the University being a Government aided Institution has no fund and if the Government pays the arrears of pay, the University has no objection to pay the arrears of pay to the writ petitioners. He has also argued that the respondent University has written to the Higher Education Department, Government of West Bengal for release of Rs. 50,00,000/- for payment of arrears of pay, but, since there is an anomaly in the fixation of pay by fixing the pay of the writ petitioners in comparison with the pay of Sri Sujit Nag, under compulsion the University had taken steps for special audit and, accordingly, the Government had been moved for that purpose. So, unless the special audit as prayed for is held and it is determined whether the fixation of pay of the writ petitioners is correct or not, the University is unable to pay the arrears of pay to the writ petitioners under such circumstances.

6. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that there is no dispute that the pay of the petitioners has been fixed on the basis of the Memo No. 3733 of 2012 dated June 26, 2012 appearing as Annexure P-3 at Page No. 35 and that the petitioners are being paid the current pay according to such fixation of pay.

7. The said office memo has clearly indicated that the pay of the petitioners has been fixed in comparison with the pay fixed in the case of Sri Sujit Nag, a junior assistant. The respondent University has filed the relevant papers as annexures to the affidavit-in-opposition indicating how the pay and allowances of the non-teaching staff of the State aided universities had been fixed keeping in parity of the pay of Sri Sujit Nag.

8. The petitioners have contended that Sri Sujit Nag was appointed as junior assistant on April 18, 2008, but, I find that the petitioners have not been able to show that he was appointed as junior assistant only on April 18, 2008.

9. On the other hand, on the basis of the official records, the Registrar (acting) and Financial Officer of the respondent University has sworn an affidavit-in-opposition stating, inter alia, that Sri Sujit Nag joined the respondent University on September 28, 1994 as an electrician in the pay scale of Rs. 1100/- to 2150/- and this was a technical post and as such his pay was fixed in higher pay at the base point. Thereafter, on September 28, 1994 he got Career Advanced Scheme and was appointed to the post of junior electrician in the scale of pay of Rs. 3850/- to 8075/- and his initial pay was fixed at Rs. 4725/- being a technician.

10. The pay of the petitioner has been fixed keeping in parity with the pay of Sri Sujit Nag and as such though the current pay is being paid to the petitioners, the arrears of pay could not be paid to them and, I find from the materials on record that the respondent University is making correspondences with the State of West Bengal, Higher Education Department for settlement of the matter and for that reason, the respondent University has asked the Higher Education Department to release a sum of Rs. 50,00,000/- for payment of arrears to the non-teaching employees. It has also been indicated that several pressures practically unbearable on daily basis from the concerned, is going on for the release of the arrears of pay.

11. Anyway, the State of West Bengal did not release the arrears of pay to the 48 non-teaching staff and for not releasing the said amount, the University is unable to pay the said amount.

12. What I find from the materials on record that the University has written to the Higher Education Department, Government of West Bengal stating that there are some anomalies in the matter of fixation of pay of the non-teaching staff by making a comparison with the fixation of pay of Sri Sujit Nag, who is quite senior to the petitioners.

13. As per contention of the respondent, Sri Sujit Nag was appointed as electrician and then placed in the scale of junior assistant with higher pay fixation but, his pay was not revised as he was enjoying the same pay scale and his designation has been changed. Thereafter, he had to resign from the post of junior electrician and then he joined in the same scale of pay i.e. 3850/- to 8075/- and incidentally, this is the pay scale of junior assistant.

14. The respondent University has contended that the case of the petitioners and that of Sri Sujit Nag are not on the same footing and the respondent has to fix the pay scale of the petitioners in the line of the pay scale of Sri Sujit Nag under compulsion to avoid agitation on daily basis, strike, gherao, etc., and the classes of the student were hampered regularly and so, the University was compelled to take a wrong decision. Such a decision of the respondent University is also evident from the letters of the respondent University to the Higher Education Department, Government of West Bengal and as such, I find that the respondent University has asked for special audit as to the fixation of pay etc., to the Government of West Bengal, who in turn wrote to the Accountant General, West

Bengal for arrangement of the special audit.

15. As noted above, the pay of Sri Sujit Nag was fixed at higher level in view of the fact that he is an electrician. The petitioners are junior or senior assistants so, i.e. in the general stream it is apparent that there were certain anomaly in the fixation of the pay of 48 non-teaching staff under compulsion and that is why, the respondent University took steps for the special audit.

16. In that view of the matter, I am of the opinion that the release as sought for relating to arrears of pay cannot be granted in this writ application so long as the special audit as prayed for by the respondent University is not conducted for verification of the pay fixation of the writ petitioners. However, the matter is kept open for decision after the completion of the special audit to be done in respect of the fixation of the pay of the 48 non-teaching staff. After completion of such special audit, if the pay as fixed by the respondent University in respect of the petitioners is upheld, they are at liberty to pray for arrears of pay to the respondents in accordance with law. Now, the respondent University cannot be compelled to pay the arrears of pay. It cannot also be stated that the respondent University has made a discrimination or arbitrariness in depriving the petitioners from getting the arrears of pay. Anyway, all the respondents are directed to take effective steps for completion of the special audit within six months from date without fail.

17. The questions framed are thus, answered accordingly.

18. It is pertinent to mention that at the time of the filing of the application by 41 petitioners, they paid the court-fees of Rs. 200/- only. Each of them has separate cause of action to pray for the fixation of pay and their ranks are not similar. So they may join together for same reliefs, but their individual claim is distinct and separate. Therefore, they are to pay court-fees individually for each. Verbal directions were given to the writ petitioners to pay the balance court-fees.

19. Possibly, this has not been done as yet. The petitioners are, therefore, directed to pay the balance court-fees for the 41 petitioners within a period of 7 days from date without fail and if the balance court-fees are not paid as indicated above, this judgment and order shall remain effective so far as the petitioner no. 1 is concerned. In that case the writ petition shall stand dismissed against the rest writ petitioners.

20. The application is disposed of in the manner indicated above.

21. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.